[20811/0204769-US0]

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants	:	Ralf WIDERA et al.
Serial No.	:	10/507,179
Filed	:	February 25, 2005
For	:	METHOD FOR THE TRANSMISSION OF MEASURED DATA FROM A MEASURING COMPUTER TO A CONTROL COMPUTER IN A MEASURING SYSTEM
Art Unit	:	2154
Examiner	:	Wen-Tai Lin
Confirmation No.	:	4000

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Commissioner for Patents
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APPELANT'S REPLY BRIEF ON APPEAL UNDER 37 C.F.R. § 41.41

SIR:

Appellants submit this reply brief for the consideration of the Board of Patent Appeals and Interferences (the "Board") in response to the Examiner's Answer mailed March 26, 2008.

RELATED APPEALS AND INTERFERENCES

There are no other prior or pending appeals, interferences or judicial proceedings known by the undersigned, or believed by the undersigned to be known to Appellants "which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal."

STATUS OF CLAIMS

Claims 1 to 12 and 28 have been cancelled.

Claims 13 to 27 and 29 to 32 are pending in the present application.

Claims 13 to 15, 17 to 20, 22, 23, 25, 27 and 29 to 31 were finally rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of U.S. Patent No. 6,459,682 ("Ellesson") and U.S. Patent No. 6,751,663 or EP 1039691 ("Farrell"). Claims 16, 21, 24, 26 and 32 were rejected under 35 U.S.C. § 103(a) as unpatentable over Ellesson.

Appellants appeal from the final rejection of claims 13 to 27 and 29 to 32.

A copy of the appeal claims, *i.e.*, claims 13 to 27 and 29 to 32, is attached hereto in the Claims Appendix.

GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

A. Whether claims 13 to 15, 17 to 20, 22, 23, 25, 27 and 29 to 31, which stand rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Ellesson and Farrell, are patentable over the combination of Ellesson and Farrell.

B. Whether claims 16, 21, 24, 26 and 32, which stand rejected under 35 U.S.C. § 103(a) as unpatentable over Ellesson, are patentable over Ellesson.

ARGUMENTS IN RESPONSE TO EXAMINER'S ANSWER MAILED MARCH 26, 2008

In rejecting a claim under 35 U.S.C. § 103(a), the Examiner bears the initial burden of presenting a *prima facie* case of obviousness. It is respectfully submitted that neither Ellesson, nor Farrell, nor Mimura, whether taken alone or in combination, disclose or suggest all the features of claims 13 and 29, and that the burden of presenting a *prima facie* case of obviousness has not been satisfied by the Final Office Action or the Examiner's

Answer. Citations to Farrell are to U.S. Patent No. 6,751,663, which was cited in the Examiner's Answer mailed March 26, 2008. The Mimura reference was cited in support of the obviousness rejection of independent claims 13 and 29 in the Advisory Action mailed September 5, 2007.

Independent claim 13 recites a method for transmitting measured information from a measuring computer to a control computer that includes "associating the characteristic values with a time of the combining." (Emphasis added). Independent claim 29 recites that a measurement computer is configured to "associate the characteristic values with a time of the combining." (Emphasis added). The term "the combining," as recited in claims 13 and 29, refers to combining the measured data into characteristic values having a lower volume than the measured data, as recited in claims 13 and 29. Thus, claims 13 and 29 both recite "associat[ing] the characteristic values with a time of the combining" of the measured values into the characteristic values.

As noted in the Examiner's Answer, Ellesson does not teach "associat[ing] the characteristic values with a time of the combining," as recited in claims 13 and 29. *See* Examiner's Answer at page 4, second full paragraph. Nor does Farrell teach the above-recited features of claims 13 and 29. In contrast, Farrell merely describes a system wide flow aggregation process in which network accounting records (NARs) capture details about activity and applications being used during a call. *See* Farrell, col. 7, lines 51 to 65. Component IDs of the NARs are time-stamped. *See* Farrell, col. 9, lines 21 to 26 and lines 49 to 54. Multiple NARs may be aggregated or summarized to produce Summary NARs, but Farrell does not disclose time-stamping the Summary NARs. *See* column 4, lines 21-26 and column 9, lines 49 to 54. The time stamps of the NARs of Farrell merely indicate the time an accounting process component ID is produced for each unaggregated NAR, so that the accounting process can discriminate between multiple NARs generated by a component. *See* column 9, lines 49 to 54. The time stamps of Farrell thus indicate only the time a non-combined data record was produced. Farrell does not teach or suggest an association of characteristic values with a time of the combining of the measured values into the characteristic values, as recited in claims 13 and 29.

Nor does Mimura disclose or suggest the recited feature of associating the characteristic values with a time of the combining of the measured values into the characteristic values. Instead, Mimura describes a method of monitoring a network where a packet switch identifies a communication flow across a network and acquires statistics data of the communications flow. *See* Abstract and column 1, lines 6 to 16. The statistics data includes the number of packets that passed through the switch, the number of discarded

packets, the time at which the packets arrived at the switch, and the time at which the packets were sent out from the switch. *See* Abstract and Figure 7. The time stamps indicate merely the start time, end time, and duration of network monitoring. *See* Figure 7 and column 14, lines 43 to 56. Mimura discloses neither combining of the measured values into the characteristic values, nor an association of characteristic values with a time of the combining of the measured values into the characteristic values, as recited in claims 13 and 29.

The feature of "associat[ing] the characteristic values with a time of the combining" of the measured values into the characteristic values, as recited in claims 13 and 29, is therefore completely absent from the cited prior art. The attempt in the Examiner's Answer to prove that "time-stamping a created information record is a typical practice in the art of network communication" does not render this feature obvious, because it is not found in the cited prior art. Indeed, that the cited prior art does not disclose this feature suggests that this feature is not a "typical practice in the art of network communication."

Moreover, even if a combination of Ellesson, Farrell, and Mimura did somehow describe all the features of independent claims 13 and 29, the Examiner's Answer provides no convincing reason one of skill in the art would have made, or attempted to make, such a combination. No "articulated reasoning with some rational underpinning" to support a legal conclusion of obviousness is found in the Examiner's Answer. *See* "Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103 in View of the Supreme Court Decision in KSR International Co. v. Teleflex Inc.," at section III. According to the Examiner's Answer, Ellesson discloses traffic flow restrictions based on "quality of service (QoS) policy" in regions of network traffic congestion. *See* Examiner's Answer at page 6. But Ellesson does not disclose or even mention quality of service policy. The cited sections of Ellesson disclose traffic flow regulation as a tool of "policy control," which includes "access control, security, [and] billing," but quality of service is not disclosed as an aspect of policy control. *See* column 5, lines 55 to 62, column 6, lines 16-26, claim 3, and claim 4. Farrell discloses the comparison of measured quality of service to a quality of service policy, for the purpose of enforcing quality of service. *See* column 31, lines 5 to 18. However, there is nothing in either Ellesson or Farrell to suggest that Farrell's quality of service policy is in any way related to Ellesson's policy control. Accordingly, there is no support for the assertion in the Examiner's Answer that "Farrell's NAR aggregation process can effectively supply Ellesson's QoS policy control modules or directory servers with relevant network traffic statistics on a per-user basis," because Ellesson does not disclose a "QoS policy." *See* Examiner's Answer at page 6. Consequently, the Examiner's Answer lacks "articulated reasoning with some rational underpinning to support the legal conclusion of obviousness," and a *prima facie* case of obviousness has not been established.

Thus neither Ellesson, nor Farrell, nor Mimura disclose or suggest at least the feature of associating the characteristic values with a time of the combining of the measured values into the characteristic values, as recited in independent claims 13 and 29. Nor has any legally sufficient reason been offered why one of skill in the art would have made, or attempted to make, the combination of Ellesson, Farrell, and Mimura. Because each of Ellesson, Farrell, and Mimura does not teach or suggest this feature of independent claims 13 and 29, none of these references alone, nor a combination thereof, could render either of claims 13 or 29 or any of their respective dependent claims, unpatentable.

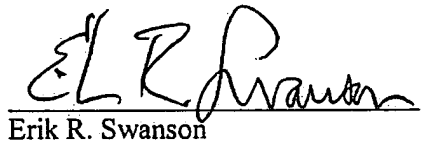
In view of the foregoing it is believed that claims 13 to 27 and 29 to 32 are in condition for allowance and it is respectfully requested that the application be reconsidered and that all pending claims be allowed and the case passed to issue.

CONCLUSION

It is respectfully submitted that the application is in condition for allowance. Favorable consideration of this reply brief is respectfully requested.

Respectfully submitted,

Dated: May 27, 2008

By: 

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Claims Appendix

Claim 13: A method for transmitting measured information from a measuring computer to a control computer of a measuring system, the measuring computer and the control computer being interconnected via a telecommunications network, the method comprising:

combining measured data into characteristic values having a lower volume than the measured data;

associating the characteristic values with a time of the combining; and

transmitting the characteristic values from the measuring computer to the control computer.

Claim 14: The method as recited in claim 13 wherein the telecommunications network includes at least one of an internet and an intranet.

Claim 15: The method as recited in claim 13 wherein the measured data includes a plurality of measurement parameters, and wherein the combining is performed according to the respective measurement parameters.

Claim 16: The method as recited in claim 13 wherein the characteristic values include at least one of a minimum, a mean value, a maximum, and a standard deviation of the measured data over a time interval.

Claim 17: The method as recited in claim 13 wherein the characteristic values include a statistical value of the measured data over a time interval.

Claim 18: The method as recited in claim 13 further comprising determining a time interval for combining the measured data as a function of a measuring method.

Claim 19: The method as recited in claim 13 wherein the measuring system includes a second measuring computer and wherein measurement packets are transmitted between measuring computer and the second measuring computer.

Claim 20: The method as recited in claim 19 wherein the measurement packets include User Datagram Protocol measurement packets.

Claim 21: The method as recited in claim 19 wherein the characteristic values include a sum of all packets lost and a maximum of all successively occurring packet losses, and further comprising determining the sum of all packets lost and the maximum of all successively occurring packet losses during a detection of measurement packet losses in a time interval.

Claim 22: The method as recited in claim 19 wherein the measured data includes unidirectional transmission characteristics.

Claim 23: The method as recited in claim 19 wherein the combining and transmitting are performed using the measuring computer, and wherein the measuring computer functions as a receiver and the second measuring computer functions as a sender.

Claim 24: The method as recited in claim 22 wherein the characteristic values include a mean one-way delay, a maximum one-way delay, and minimum one-way delay, a

standard deviation of a one-way delay, a mean IP delay variation, a maximum IP delay variation, a standard deviation of an IP delay variation, a packet loss, and a packet throughput.

Claim 25: The method as recited in claim 22 wherein the characteristic values include a statistical characteristic value.

Claim 26: The method as recited in claim 23 wherein the characteristic values include a mean one-way delay, a maximum one-way delay, and minimum one-way delay, a standard deviation of a one-way delay, a mean IP delay variation, a maximum IP delay variation, a standard deviation of an IP delay variation, a packet loss, and a packet throughput.

Claim 27: The method as recited in claim 23 wherein the characteristic values include a statistical characteristic value.

Claim 29: A measuring system comprising:

a control computer; and

a measuring computer interconnected with the control computer via a telecommunications network, the measuring computer being configured to:

combine measured data into characteristic values having a lower volume than the measured data;

associate the characteristic values with a time of the combining; and

transmit the characteristic values to the control computer.

Claim 30: The measuring system as recited in claim 29 wherein the telecommunications network includes at least one of an internet and an intranet.

Claim 31: The measuring system as recited in claim 29 wherein the measured data includes a plurality of measurement parameters, and wherein the combining is performed according to the respective measurement parameters.

Claim 32: The measuring system as recited in claim 29 wherein the characteristic values include at least one of a minimum, a mean value, a maximum, and a standard deviation of the measured data over a time interval.